

IN THE SUPREME COURT OF IOWA
Supreme Court No. 16-1619

GUILLERMO HERNANDEZ RUIZ,
Applicant-Appellee,

vs.

STATE OF IOWA,
Respondent-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE LAWRENCE P. MCLELLAN, JUDGE

APPELLEE'S FINAL BRIEF

Nichole Miras Mordini, AT0005474
Margaret A. Hanson, AT0011866
DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.
Davis Brown Tower
215 - 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
Email:
NikkiMordini@DavisBrownLaw.com
MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE
GUILLERMO HERNANDEZ RUIZ

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUE PRESENTED FOR REVIEW	v
ROUTING STATEMENT	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	6
I. Standard of Review and Preservation of Error.....	6
A. Standard of Review	6
B. Error Preservation.....	6
II. The District Court Did not Err in Granting Postconviction Relief Based on Michael Said’s Ineffective Assistance, as Hernandez Ruiz had the Right to Counsel at the Time of Said’s Breach of His Essential Duty	7
A. Relevant case law, as well as secondary sources, demand a much less rigid interpretation of attachment of the Sixth Amendment right to counsel	7
B. Public policy favors an expansion of the Sixth Amendment right to counsel, given the devastating immigration consequences that counsel’s advice will have for Hernandez Ruiz	11
CONCLUSION	15
REQUEST FOR ORAL ARGUMENT	16

CERTIFICATE OF FILING.....	17
CERTIFICATE OF SERVICE	18
CERTIFICATE OF COMPLIANCE.....	19
ATTORNEY’S COST CERTIFICATE.....	20

TABLE OF AUTHORITIES

Case Law

<i>Claude v. Guaranty Nat’l Ins. Co.</i> , 679 N.W.2d 659 (Iowa 204)	12
<i>Daughenbaugh v. State</i> , 805 N.W.2d 591, 594 (Iowa 2011)	12
<i>Dempsey v. State</i> , 860 N.W.2d 860, 868 (Iowa 2015).....	12
<i>In Re Marriage of Witten</i> , 672 N.W.2d 768, 780 (Iowa 2003)`	12
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18, 26-27.....	10
<i>Padilla v. Kentucky</i> , 559 U.S. 356, 364 (2010)	12, 13
<i>Pennsylvania v. Finley</i> , 481 U.S. 551, 557-58 (1987).....	9
<i>State v. Dowell</i> , No. 12-1269, 2015 WL 4158758 at *3 (Iowa Ct. App. 2015).....	9
<i>State v. Dudley</i> , 766 N.W.2d 606, 617 (Iowa 2009).....	9
<i>State v. Hernandez-Galarza</i> , 864 N.W. 2d 122, 126 (Iowa 2015)	12
<i>State v. Senn</i> , 882 N.W.2d 1, 31 (Iowa 2016).....	9
<i>State v. Walker</i> , 390 N.W.2d 589, 591-92 (Iowa 1986)	9
<i>State v. Young</i> , 863 N.W.2d 249, 271 (Iowa 2015)	12
<i>Strickland v. Washington</i> , 466 U.S. 668, 686 (1984)	9
<i>United States v. Bowers</i> , 517 F.Supp. 666 (W.D. Pa. 1981)	7, 8, 11
<i>United States v. Gouveia</i> , 467 U.S. 180, 187-88 (1981)	8, 9
<i>Wainwright v. Torna</i> , 455 U.S. 586, 587-88 (1982).....	9

Statutes & Rules

§ 39:5 Right to counsel, 4A IA. Prac., Criminal Procedure § 39:5 (2016 ed.)	10
--	----

Other Authority:

Catz, et al., <i>The Right to Appointed Counsel in Quasi-Criminal cases: Towards an Effective Assistance of Counsel Standard</i> , 19 Harv. C.R.-C.L. L. Rev. 397, 408-09 (1984)	10, 11
---	--------

STATEMENT OF ISSUES PRESENTED FOR REVIEW

I. Standard of Review and Preservation of Error

II. The District Court did not Err in Granting Postconviction Relief Based on Michael Said's Ineffective Assistance, as Appellee Had the Right to Counsel at the Time of Said's Breach of his Essential Duty

Case Law

<i>Claude v. Guaranty Nat'l Ins. Co.</i> , 679 N.W.2d 659 (Iowa 204)	12
<i>Daughenbaugh v. State</i> , 805 N.W.2d 591, 594 (Iowa 2011)	12
<i>Dempsey v. State</i> , 860 N.W.2d 860, 868 (Iowa 2015).....	12
<i>In Re Marriage of Witten</i> , 672 N.W.2d 768, 780 (Iowa 2003)`	12
<i>Lassiter v. Department of Social Services</i> , 452 U.S. 18, 26-27.....	10
<i>Padilla v. Kentucky</i> , 559 U.S. 356, 364 (2010)	12, 13
<i>Pennsylvania v. Finley</i> , 481 U.S. 551, 557-58 (1987).....	9
<i>State v. Dowell</i> , No. 12-1269, 2015 WL 4158758 at *3 (Iowa Ct. App. 2015).....	9
<i>State v. Dudley</i> , 766 N.W.2d 606, 617 (Iowa 2009).....	9
<i>State v. Hernandez-Galarza</i> , 864 N.W. 2d 122, 126 (Iowa 2015)	12
<i>State v. Senn</i> , 882 N.W.2d 1, 31 (Iowa 2016).....	9
<i>State v. Walker</i> , 390 N.W.2d 589, 591-92 (Iowa 1986)	9
<i>State v. Young</i> , 863 N.W.2d 249, 271 (Iowa 2015)	12
<i>Strickland v. Washington</i> , 466 U.S. 668, 686 (1984)	9
<i>United States v. Bowers</i> , 517 F.Supp. 666 (W.D. Pa. 1981)	7, 8, 11

United States v. Gouveia, 467 U.S. 180, 187-88 (1981) 8, 9

Wainwright v. Torna, 455 U.S. 586, 587-88 (1982)..... 9

Statutes & Rules

§ 39:5 Right to counsel, 4A IA. Prac., Criminal Procedure § 39:5
(2016 ed.) 10

Other Authority:

Catz, et al., *The Right to Appointed Counsel in Quasi-Criminal cases:
Towards an Effective Assistance of Counsel Standard*,
19 Harv. C.R.-C.L. L. Rev. 397, 408-09 (1984) 10, 11

ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court as a case “presenting substantial issues of first impression;” as a case “presenting fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court;” and as a case presenting substantial questions or enunciating or changing legal principles.” Iowa. R. App. P. 6.1101(2) (c), (d), & (f).

STATEMENT OF THE CASE

This case involves the application for postconviction relief in favor of Appellee, Guillermo Hernandez Ruiz (“Hernandez Ruiz”). The District Court found that trial counsel was counsel advised Mr. Hernandez Ruiz to obtain a drivers’ license from the Iowa Department of Transportation with the knowledge that he had previously registered vehicles under a false social security number. Mr. Hernandez Ruiz filed for postconviction relief on May 29, 2015, and this matter was heard before the Honorable Lawrence P. McLellan on May 31, 2016. The District Court granted the application for postconviction relief on August 29, 2016. Appellant, the State (“the State”), does not contest on appeal that trial counsel Michael Said (“Said”), breached an essential duty as Said failed to advise Mr. Hernandez Ruiz of the criminal and immigration consequences of seeking a drivers’ license from the Iowa Department of Transportation. The State also does not dispute that prejudice resulted from Said’s actions. The only issue that the State raises on appeal is whether Mr. Hernandez Ruiz had a constitutional right to counsel, such that he could bring a claim for ineffective assistance of counsel, at the time Said breached his essential duty.

STATEMENT OF THE FACTS

Guillermo Hernandez Ruiz is a native and citizen of Mexico. (App. at 73, Amended Application for PCR at 3). He entered the United States, without permission in November of 1999. (App. at 73, Amended Application for PCR at 3). On November 3, 2010, he was placed in deportation proceedings. (App. at 73-74, Amended Application for PCR at 3-4). Hernandez Ruiz was alleged to have entered the United States without having been admitted or paroled. (App. at 74, Amended Application for PCR at 4).

Mr. Hernandez Ruiz then hired attorney Michael Said and soon after, Said filed an application for Cancellation of Removal on his behalf. (App. at 74, Amended Application for PCR at 4). The application for Cancellation of Removal was filed with the United States Immigration and Customs office on March 1, 2011 and filed with the court soon thereafter. (App. at 74, Amended Application for PCR at 4). Once the application for Cancellation of Removal had been submitted, Hernandez Ruiz applied for and was granted, an Employment Authorization Document (“EAD”) and social security cards. With the valid EAD, Hernandez Ruiz became eligible for a driver’s license. (App. at 74, Amended Application for PCR at 4). Said, who was also Hernandez Ruiz’s criminal defense counsel, spoke to him and advised of his eligibility for a driver’s license. Said recommended he obtain a driver’s license, but did not specifically advise of the

criminal or immigration consequences of seeking one. (App. at 74, Amended Application for PCR at 4).

On March 1, 2012, after having spoken to Said about obtaining a driver's license, Hernandez Ruiz went to the DOT. (App. at 79, PCR Order at 1). During his visit to the DOT, the clerk at the DOT was alerted by the DOT's internal computer system that Hernandez Ruiz had previously registered vehicles under different social security numbers. (App. at 79-80, PCR Order at 1-2). The clerk declined Hernandez Ruiz's request for a license. (App. at 80, PCR Order at 2).

After his unsuccessful trip to the DOT, Hernandez Ruiz spoke to Said again. (App. at 80, PCR Order at 2). Said then offered him two options: (1) return to the DOT alone and risk being charged with a felony; or (2) allow Said to contact a DOT investigator directly to arrange a plea to a misdemeanor charge that would have less serious immigration consequence. (App. at 80, PCR Order at 2). Having only been given these two options, Hernandez Ruiz selected the latter. (App. at 80, PCR Order at 2).

As a result, Hernandez Ruiz was charged with fraudulent practices in the third degree in violation of Iowa Code Section 714.11, an aggravated misdemeanor. (App. at 80, PCR Order at 2). Based on Said's advice, he pled to a lesser offense of fraudulent practices in the fourth degree, a serious misdemeanor. (App. at 80, PCR Order at 2). Fraudulent practices in the fourth degree is still

classified as a “crime involving moral turpitude,” leaving Hernandez Ruiz ineligible for Cancellation of Removal per Said’s prior application. (App. at 80-81, PCR Order at 2-3). Accordingly, following plea and conviction, the United States filed a motion to pre-terminate the application for Cancellation of Removal. (App. at 80, PCR Order at 2). The immigration court granted the motion to pre-terminate. (App. at 80-81, PCR Order at 2-3). As a result, Hernandez Ruiz will face deportation. (App. at 75, Amended Application for PCR at 5).

Said knew, before he advised Hernandez Ruiz to go to the Iowa DOT, that he had previously registered vehicles under a different social security number. (App. at 84, PCR Order at 6). Said also knew that the Iowa DOT would investigate an individual who attempted to obtain a driver’s license in order to determine whether said individual had previously registered vehicles or obtained licenses improperly. (App. at 84, PCR Order at 6). Said knew that if the DOT discovered that an individual had previously registered vehicles or obtained licenses improperly, the individual was likely to be charged with crimes or arrested. (App. at 84, PCR Order at 6). Said did not tell Hernandez Ruiz that attempting to obtain a driver’s license could result in him being charged with a crime that could adversely impact his immigration status. (App. at 84, PCR Order at 6). In fact, Said testified at the hearing, that he did not believe he had the option to tell Hernandez Ruiz not to get a driver’s license and/or not to drive. (App. at

65-68, Transcript of PCR Hearing at p. 109-113). Hernandez Ruiz also testified at the time he went to get his license that he had *not* been driving without a license and that he was getting rides from friends. (App. at 62-63, Transcript of PCR Hearing at p. 62-63). Said also admitted that he did not recommend that Hernandez Ruiz take no action until the appropriate statute of limitations had run. (App. at 69-70, Transcript for PCR Hearing at p. 114-15).

Not only did Said fail to advise Hernandez Ruiz that he could be charged with a crime, Said affirmatively told Hernandez Ruiz to go to the DOT and then secured admissions from Hernandez Ruiz and provided these to DOT officials, resulting in the issuance of a criminal citation. (App. at 74, Amended Application for PCR at 4). Said contacted DOT Investigator Don Scharr and advised that Hernandez Ruiz had titled vehicles in his name using invalid or fictitious social security numbers. (App. at 74, Amended Application for PCR at 4).

ARGUMENT

I. STANDARD OF REVIEW AND PRESERVATION OF ERROR

A. Standard Of Review

The standard of review of a claim of ineffective assistance of counsel is *de novo*. State v. Clay, 824 N.W.2d 488, 494 (Iowa 2012).

B. Error Preservation

Appellee does not contest error preservation. Iowa R. App. P. 6.903(3).

II. THE DISTRICT COURT DID NOT ERR IN GRANTING POSTCONVICTION RELIEF BASED ON COUNSEL'S INEFFECTIVE ASSISTANCE, AS APPELLEE HAD COUNSEL WHO BREACHED AN ESSENTIAL DUTY.

The core of the State's argument is that Hernandez Ruiz was not entitled to postconviction relief based on his ineffective assistance of counsel claim because he had no right to counsel at the time of Said's breach of his essential duty to Hernandez Ruiz. More specifically, the State argues that at the time of Said's breach of his essential duty to Hernandez Ruiz, criminal proceedings had not been initiated against Hernandez Ruiz, such that the right to counsel would have arisen. However, as described herein, relevant case law, as well as secondary sources and public policy considerations, demand a much less rigid interpretation of the attachment of the Sixth Amendment right to counsel. Therefore, Hernandez Ruiz's right to counsel had attached at the time Said breached his essential duty to Hernandez Ruiz.

A. Relevant case law, as well as secondary sources, demand a much less rigid interpretation of attachment of the Sixth Amendment right to counsel.

As noted by the District Court, courts have previously found the right to counsel to have attached prior to the initiation of criminal proceedings. In United States v. Bowers, counsel's actions *prior to* an indictment constituted ineffective assistance of counsel. See United States v. Bowers, 517 F.Supp. 666 (W.D. Pa. 1981). In Bowers, the court determined that a defense counsel's failure to convey

a plea offer to a non-indicted defendant constituted ineffective assistance of counsel. Id. The prosecution offered informal immunity from prosecution to the defendant in return for her cooperation with the government. Id. at 669. When the defendant's attorney failed to respond to the prosecutor's offer, after repeated attempts to obtain a response, the grand jury returned an indictment against the defendant. Id. The court *dismissed the indictment*, and in doing so, found that "a lawyer who fails to convey to his client a proposal which may enable the client to avoid the burdens of an indictment violates the fundamental duty of undivided loyalty to his client." Id. at 671. The lawyer's failure to "convey to his client a proposal which may enable the client to avoid the burdens of an indictment violates the fundamental duty of undivided loyalty to his client." Id. "If counsel fails to inform his client of a pending proposal, *prior to adversary criminal proceedings*, and the client is prejudiced, fairness and due process dictate relief." Id. (emphasis added).¹

¹ The State seems to believe that the Bowers case is somehow contrary to the Gouveia case, upon which the State heavily relies, and therefore that the District Court erred in citing Bowers in support of its grant of postconviction relief. Hernandez Ruiz does not dispute that Gouveia stands for the proposition "that a person's Sixth and Fourteenth Amendment right to counsel attaches only at or after the time that adversary judicial proceedings have been initiated against him." United States v. Gouveia, 467 U.S. 180, 187 (1984). However, Gouveia does not abrogate cases such as Bowers, and, in fact, Gouveia clarifies that "the right to counsel exists to protect the accused during *trial-type* confrontations with the prosecutor. . . ." Gouveia, 467 U.S. at 190 (emphasis added). Bowers clearly involved such a situation.

Though the State cited several cases² which set forth that the Sixth Amendment right to counsel does not attach until the commencement of criminal proceedings (i.e., filing of charges by the state) against an accused, said cases are distinguishable. Notably, none of the cases the State cited in support of its position address this principle in the context of immigration law. As set forth in Section B herein, the instant case presents the unique intersection of criminal law and immigration law, where the consequences for Hernandez Ruiz do not simply involve jail time, but also the extremely harsh penalty of *deportation*. See infra Section B. Accordingly, the cases cited by the State are factually distinct.

Additionally, the cases cited by the State³ expressly describe situations where the criminal defendant had not yet retained counsel. As the District Court correctly noted, in this case, Hernandez Ruiz

is not arguing that he should have had counsel appointed for him prior to proceeding to the DOT to obtain his license because he was already represented by counsel. [Hernandez Ruiz's] complaint is that the counsel that was representing him failed to properly advise him of the potential criminal and immigration consequences if he sought a driver's license.

² See Pennsylvania v. Finley, 481 U.S. 551, 557-58 (1987); Strickland v. Washington, 466 U.S. 668, 686 (1984); Wainwright v. Torna, 455 U.S. 586, 587-88 (1982); United States v. Gouveia, 467 U.S. 180, 187-88 (1981); State v. Senn, 882 N.W.2d 1, 31 (Iowa 2016); State v. Dudley, 766 N.W.2d 606, 617 (Iowa 2009); State v. Walker, 390 N.W.2d 589, 591-92 (Iowa 1986); State v. Dowell, No. 12-1269, 2015 WL 4158758 at *3 (Iowa Ct. App. 2015).

³ See supra note 2.

(App. at 87, PCR Order at 9). Specifically, Hernandez Ruiz engaged Said in 2011 to assist him with removal proceedings, and from that time forward, Said continued to represent Hernandez Ruiz in his immigration and incidental criminal matters. (App. at 80, PCR Order at 2). Consequently, this case presents much different circumstances; the cases cited by the State are distinguishable from the instant case and should be given only limited consideration.

Notably, the instant case *is not inconsistent* with the cases set forth by the State.⁴ Courts have found “the appointment of counsel in a quasi-criminal proceeding mandated by the due process clause when fundamental liberty interests of the individual are threatened, when the proceeding resembles a criminal prosecution, or when there is an extreme imbalance of power between the litigants. . . . [T]he appointment of counsel is required where other liberty interests are in jeopardy⁵, such as in proceedings for termination of parental rights, divorce, paternity, and in *deportation*.” Catz, et al., The Right to Appointed Counsel in Quasi-Criminal Cases: Towards an Effective Assistance of Counsel Standard, 19 Harv. C.R.-C.L. L. Rev. 397, 408-09 (1984) (emphasis added). Here, the DOT proceedings against Hernandez Ruiz were tantamount to a criminal prosecution.

⁴ See supra note 2; see also § 39:5 Right to counsel, 4A Ia. Prac., Criminal Procedure § 39:5 (2016 ed.) (“The Sixth Amendment right to counsel attaches *when the government focuses its attention* on a person as the defendant in a criminal prosecution, by the filing of a complaint or indictment.”) (emphasis added).

⁵ See also Lassiter v. Department of Social Services, 452 U.S. 18, 26-27 (erecting a presumption of a right to counsel “where the litigant may lose his physical liberty if he loses the litigation.”).

Said's advice directly caused the initiation of the DOT's prosecution of Hernandez Ruiz. (App. at 74, Amended Application for PCR at 4). When Said affirmatively *advised* Hernandez Ruiz to go to the DOT to obtain a driver's license, it is not as though Said advised Hernandez Ruiz to run a normal daily errand, such as going to the doctor's office or the grocery store. Said advised Hernandez Ruiz to commit an act which Said *knew* could, and would, have criminal consequences. As soon as Hernandez Ruiz left the DOT after attempting to obtain a driver's license, the DOT began its prosecution of Hernandez Ruiz—a prosecution which ultimately led to a guilty plea by Hernandez Ruiz and his deportation. Consequently, the DOT prosecution of Hernandez Ruiz, at its very core, was at least a *quasi*-criminal proceeding⁶, which would invoke the right to counsel.

However, as in the Bowers case, this Court should find that Hernandez Ruiz's right to counsel had attached when Said undertook to advise him to obtain a driver's license.

B. Public policy favors an expansion of the Sixth Amendment right to counsel, given the devastating immigration consequences that counsel's advice will have for Hernandez Ruiz.

⁶ “[W]hen counsel has failed to perform in quasi-criminal litigation, the inadequacy of a malpractice action as a remedy, with its difficulties of proof and its limitation to money damages, is manifest. Therefore, an appropriate alternative would be to return the parties to the pretrial status quo, as is done in criminal cases.” Catz, et al., The Right to Appointed Counsel in Quasi-Criminal Cases: Towards an Effective Assistance of Counsel Standard, 19 Harv. C.R.-C.L. L. Rev. 397, 467 (1984).

Additionally, public policy favors a broader interpretation of the constitutional right to counsel, particularly as it relates to ineffective assistance counsel claims made by noncitizens. In determining the public policy of the state of Iowa, an Iowa court looks to “that which is not prohibited by statute, condemned by judicial decision, nor contrary to the public morals.” Claude v. Guaranty Nat’l Ins. Co., 679 N.W.2d 659 (Iowa 2004) (citing In re Marriage of Witten, 672 N.W.2d 768, 780 (Iowa 2003)).

Ineffective assistance of counsel claims, as they relate to noncitizen individuals, present unique issues and policy considerations for the courts to consider. The Iowa Supreme Court has often cited Padilla v. Kentucky, the primary United States Supreme Court case concerning ineffective assistance of counsel within the immigration context. See e.g., State v. Young, 863 N.W.2d 249, 271 (Iowa 2015); State v. Hernandez-Galarza, 864 N.W.2d 122, 126 (Iowa 2015); Dempsey v. State, 860 N.W.2d 860, 868 (Iowa 2015); Daughenbaugh v. State, 805 N.W.2d 591, 594 (Iowa 2011). Padilla was a decision that came on the heels of continued and drastic changes to federal immigration laws. The Padilla Court, in a general statement, noted that per the ever-changing immigration laws, and their impact on noncitizens’ criminal convictions, “accurate legal advice for noncitizens accused of crimes *has never been more important.*” Padilla v. Kentucky, 559 U.S. 356, 364 (2010) (emphasis added). In this context, we have a

particularly vulnerable class of criminal defendants who face the drastic and severe penalty of deportation, and so “[w]hen attorneys know that their clients face possible exile from this country and separation from their families, they should not be encouraged to say nothing at all.” Id. at 370. To allow such behavior from counsel, with whom these clients place their utmost trust and reliance “would deny a class of clients least able to represent themselves the most rudimentary advice on deportation even when it is readily available.” Id. at 370–71.

Particularly, the Padilla Court noted that though immigration proceedings are civil in nature, because the penalty under such proceedings can result in deportation, immigration proceedings are *uniquely tied to the criminal process*. Id. at 365-66.

We have long recognized that deportation is a particularly severe “penalty,” but it is not, in a strict sense, a criminal sanction. Although removal proceedings are civil in nature, deportation is nevertheless intimately related to the criminal process. Our law has enmeshed criminal convictions and the penalty of deportation for nearly a century. And, importantly, recent changes in our immigration law have made removal nearly an automatic result for a broad class of noncitizen offenders. Thus, we find it “most difficult” to divorce the penalty from the conviction in the deportation context. Moreover, we are quite confident that noncitizen defendants facing a risk of deportation for a particular offense find it even more difficult.

Id. (internal citations omitted) (emphasis added). Because immigration and criminal law have become so closely intertwined, “[w]e too have previously recognized that *‘[p]reserving the client’s right to remain in the United States may be more important to the client than any potential jail sentence.’*” Id. at 368. Therefore, it follows that advice from counsel regarding deportation is *expressly* within the scope of the Sixth Amendment right to counsel. Id. at 366.

Here, Said undertook to represent Hernandez Ruiz not only in his removal proceedings, but because of the nature of immigration proceedings and their inextricable link to the criminal process, Said also assented to the criminal representation of Hernandez Ruiz. It was then that Said breached his essential duty to him in advising him to seek a driver’s license with the knowledge that this would cause him significant criminal trouble and eventually deportation. Despite the fact that *due to Said’s actions*, the DOT investigated and obtained a criminal conviction of Hernandez Ruiz, the State still argues that the mere timing of Said’s advice prohibits Hernandez Ruiz’s ineffective assistance of counsel claim. This argument is without merit.

It would be entirely contrary to the acknowledged public policy considerations to deny that the right to counsel existed, thereby upholding a conviction, in this case where Said was allowed to: (1) undertake the representation of a particularly vulnerable individual, (2) provide advice which would *lead to* the

criminal conviction of that individual, and (3) *assist/aid* in the criminal investigation of that individual. To find otherwise would be to imply that an attorney in this setting could provide such thoughtless, negligent advice to a client, and when, because of that advice, the client has suffered the most unique, personal, and noncompensable of injuries—exile from the United States—the client is left *completely* without recourse. Due to the serious nature of the representation Said provided to Hernandez Ruiz, and the severity of the consequences that could, *and did*, result for Hernandez Ruiz, once he sought this advice from Said, he was guaranteed effective assistance from Said. Therefore, this Court should find that the Sixth Amendment right to counsel’s expanse reaches the facts of this case.

CONCLUSION

For the reasons stated herein, Mr. Hernandez Ruiz respectfully requests that the Court affirm the District Court’s order granting Appellee’s application for postconviction relief.

REQUEST FOR ORAL ARGUMENT

Counsel for Appellee respectfully requests to be heard in oral argument upon submission of this case.

Margaret A. Hanson

Nichole Miras Mordini, AT0005474

Margaret A. Hanson, AT0011866

DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.

Davis Brown Tower

215 - 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

Email: NikkiMordini@DavisBrownLaw.com

MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE GUILLERMO
HERNANDEZ RUIZ

CERTIFICATE OF FILING

The undersigned hereby certifies that on the 9th day of March, 2017, the Appellee's Final Brief was filed with the Clerk of the Iowa Supreme Court, 1111 E. Court Ave., Des Moines, Iowa 50319 by electronically filing the brief through the EDMS system.

Margaret A. Hanson

Nichole Miras Mordini, AT0005474

Margaret A. Hanson, AT0011866

DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.

Davis Brown Tower

215 - 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

Email: NikkiMordini@DavisBrownLaw.com

MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE GUILLERMO
HERNANDEZ RUIZ

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of March, 2017, one copy of the Appellee's Final Brief was served upon all parties to the above cause through the Court's EDMS system to the parties of record herein as follows:

Thomas J. Miller
Attorney General of Iowa

Thomas J. Ogden
Assistant Attorney General
Hoover State Office Building, 2nd Floor
Des Moines, IA 50319

John P. Sarcone
Polk County Attorney

Kevin Hathaway
Assistant County Attorney

Attorneys for Appellant

Margaret A. Hanson
Nichole Miras Mordini, AT0005474
Margaret A. Hanson, AT0011866
DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.
Davis Brown Tower
215 - 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
Email: NikkiMordini@DavisBrownLaw.com
MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE
GUILLERMO HERNANDEZ RUIZ

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:

This brief contains 3,045 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in Times New Roman, size 14.

Date: March 9, 2017.

Margaret A. Hanson

Nichole Miras Mordini, AT0005474

Margaret A. Hanson, AT0011866

DAVIS, BROWN, KOEHN,

SHORS & ROBERTS, P.C.

Davis Brown Tower

215 - 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

Email: NikkiMordini@DavisBrownLaw.com

MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE GUILLERMO
HERNANDEZ RUIZ

ATTORNEY'S COST CERTIFICATE

I hereby certify that the cost of printing the foregoing Appellee's Final Brief
was the sum of \$ _____.

Margaret A. Hanson

Nichole Miras Mordini, AT0005474

Margaret A. Hanson, AT0011866

DAVIS, BROWN, KOEHN,
SHORS & ROBERTS, P.C.

Davis Brown Tower

215 10th Street, Suite 1300

Des Moines, Iowa 50309

Telephone: (515) 288-2500

Facsimile: (515) 243-0654

Email: NikkiMordini@DavisBrownLaw.com

MaggieHanson@DavisBrownLaw.com

ATTORNEYS FOR APPELLEE GUILLERMO
HERNANDEZ RUIZ